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"Legalization of Euthanasia for Patients With Terminal Illness- A Study"

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“Legalization of Euthanasia for Patients With Terminal Illness- A Study”

Introduction-

The act of ending a patient's life to eliminate their suffering is known as euthanasia. The patient in issue would typically be suffering from a terrible illness or be in excruciating pain.

The Greek roots of the term "euthanasia" are "eu" (good) and "thanatos" (death). Euthanasia would allow the patient to have a comparatively "good death," as opposed to sentencing them to a slow, agonizing, or undignified demise. 'Euthanasia' was defined as "a deliberate intervention undertaken with the express intention of ending a life to relieve intractable suffering" by the House of Lords Select Committee on 'Medical Ethics' in England.

Types of Euthanasia-

Based on the nature and form of euthanasia, numerous categories have been established. Some of them include:

1. **Active euthanasia:** the deliberate killing of a patient, such as by administering a deadly amount of medication. Occasionally known as "aggressive" euthanasia.
2. **Passive euthanasia:** the deliberate withholding of artificial life support, such as a ventilator or feeding tube, resulting in the patient's death.
3. **Involuntary euthanasia:** when done against the patient's will, such as when the patient is unconscious and it is unclear what he or she wants.
4. **Voluntary euthanasia** occurs when the victim requests to be murdered.
5. **Self-administered euthanasia**, in which the person being killed uses the method.
6. **Other-administered euthanasia:** The patient is not the one who administers the lethal dose.
7. **Assisted:** The patient gives the lethal dose, but with the help of a medical professional.

Active euthanasia is permitted in some nations, such as Luxemburg, Belgium, and the Netherlands, as well as in the US states of Washington and Oregon, however it is still

prohibited in India. In a momentous decision, the Supreme Court of India authorized passive euthanasia in 2018 with stringent regulations.

Euthanasia and terminally ill patients-

The act of ending a patient's life in order to lessen their suffering is known as euthanasia. Normally, the patient in question would be near death or going through a lot of agony. A terminal sickness is a disease or condition that cannot be treated and is expected to result in death. It's sometimes referred to as a life-limiting condition. As opposed to injuries, this word is more frequently used to describe progressive illnesses like cancer, dementia, or advanced heart disease.

Patients should have the freedom to live their lives as they choose, say proponents of voluntarily ending patients' lives. By allowing patients who are in vegetative states with no chance of recovery to pass away, unnecessary and wasteful treatment attempts are avoided in the future. Killing them would stop any more misery if they were already experiencing it. Those who support voluntary euthanasia contend that by supporting a terminally sick or suffering patient, a doctor is simply facilitating the patient's desire to pass away with dignity. Those who oppose euthanasia frequently claim that killing is always wrong and that euthanasia performed without the patient's consent violates their patient rights.

Position of India on Euthanasia-

The people who favour allowing patients to freely end their life believe that patients should have the opportunity to live their lives as they see fit. Unnecessary and inefficient medical procedures are averted in the future by letting patients who are in vegetative states with little possibility of recovery to pass away. If they were already in misery, killing them would put an end to it. Supporters of voluntary euthanasia argue that by helping a terminally ill or suffering patient, a physician is just enabling the patient's wish to die with dignity. Many opponents of euthanasia say that killing is always wrong and that performing euthanasia without the patient's agreement violates their patient rights.

In the case of P. **Rathiram vs Union of India (1994)**[1], it was determined that section 309 of the IPC, 1860 violated constitutional provisions because it went against Article 21 of the Indian Constitution, which protects a person's right to life and personal liberty and their ability to decide how to live their lives. However, the appellant and her husband were accused of aiding their daughter-in-law's suicide in the case of **Gian Kaur vs the State of Punjab**[2], which was brought under section 306 of the IPC, 1860. According to Section 306 of the IPC, 1860, the trial court found the defendant guilty, and the High Court upheld that decision. In the Supreme Court of India, the appellant disputed whether Section 306 and Section 309 violated Article 21. The appellant came to the conclusion that "Right to Die" is covered by Article 21, i.e.

Article 21 of the Indian Constitution guarantees everyone the fundamental right to life, and anyone acting in violation of that right by violating section 306 is only assisting that person in upholding that right. In light of this, Section 306's punishment should be ruled unlawful for violating fundamental rights. The constitutional bench of the Supreme Court ruled that article 21's "right to life" does not encompass "right to death." Sections 306 and 309 of the IPC, 1860 were upheld by the court as being constitutional. A report on the idea of euthanasia had been suggested by the Indian Psychiatric Society to the Law Commission. Through Suo moto action, the Law Commission took up the matter and produced a report urging the government to take action to remove section 309 IPC. The Report examined the subject's constitutionality and validity and came to the appropriate conclusions. It concluded that the law should be repealed because it is inhumane, regardless of its constitutionality.

Passive euthanasia was deemed permissible by the Supreme Court in the historic case of **Aruna Ramchandra Shanbaug v. Union of India** [3]without the passage of a legislature or an act, but rather under the instructions given. Active euthanasia was, however, prohibited from taking place and was thought to be illegal until the law passed a law making it functional, regulated, and legal. Additionally, the court determined that active euthanasia violates sections 302 or at least 304 of the IPC, and that doctors who carry out such euthanasia through physician-assisted suicide (PAS) shall be held accountable under section 306 of the IPC.

The Court gave the following safeguards and conditions:

[1] AIR 1994 SC 1844
[2] 1996 (2) SCC 648: AIR 1996 SC 946
[3] AIR 2011 SC 1290

- A decision has to be taken to turn off the life support provided to the patient either by the parents or the spouse or other relatives or in the absence of any of them, such a decision should be taken by a person acting as his next friend. It can be taken by the doctors attending to the patient. However, the decision of euthanasia should be bona fide i.e., in the best interest of the patient.
- Even if the decision is taken by the near relatives or doctors or next friend to withdraw or pull out the life support of the patient, such a decision should be required to be taken after the approval of the High court.

The petitioner submitted an application to the chief justice of the high court, requesting that the high court determine whether to approve passive euthanasia. The court in this case also established a procedure that began with that step. A minimum of two judges should sit on the bench for the purpose of deciding this case. The bench should consult a panel of three physicians, who should be chosen after consulting the relevant physicians and medical experts.

The high court must notify the patient's parents, spouse, siblings, and, in their absence, a friend of the patient, of the appointment of such doctors to the committee. The notice must also include the committee's report. The High Court must reach a decision following receipt of such a report. The Supreme Court devised this approach in order to ensure that the euthanasia process is free from the wishes of the petitioner's family members as well as any negative ulterior intentions.

Arguments in favour of legalization of Euthanasia-

- The terrible agony and suffering that a person is experiencing can be relieved by euthanasia. It spares those who are near death from a slow death.
- The goal of human life is to live a dignified life, and it is against the person's will to make them live in an undignified manner. Thus, it expresses a person's choice, which is a fundamental value.
- Funds are scarce in many emerging and underdeveloped nations, including India. Hospital room availability is a problem. Therefore, rather than sustaining the lives of individuals who desire to die, the energy of medical staff and hospital beds might be employed for those whose lives can be

preserved. The fact that a lot of medical facilities cost a lot of money are being spent on these individuals, who will eventually die, is another crucial argument that proponents of euthanasia stress. They contend that it would be far preferable to employ these resources for people who even have a hope of recovery rather than squandering those on such patients.

- Living with dignity is expressly guaranteed by Article 21 of the Indian Constitution. A person should be granted the freedom to end his life if his standard of living falls below a certain level, as everyone has the right to live lives with at least the bare minimum of dignity. Euthanasia proponents frequently argue out that since passive euthanasia has been legalized, active euthanasia must likewise be permitted. A patient will only want to end their life if they are in excruciating pain and would rather die peacefully than live a horrible life filled with anguish and suffering. Consequently, from a moral standpoint, it will be preferable to let the patient pass away without agony wherever possible, when in any case he knows that he is going to die because of that terminal illness.
- Since it is a painless method of ending the lives of those who are afflicted with terrible and terminal illnesses, its goal is both altruistic and useful. In other words, helping rather than harming is the goal here.
- It not only soothes the patient's excruciating pain, but it also eases the mental anguish of the patient's family members.
- One argument frequently made against euthanasia proponents is that if such a privilege is given to terminally sick patients, there is a danger that it may be abused. Supporters counter that while any right carries the potential for abuse, this does not mandate that the people should be denied access to that right in the first place. Instead of imagining it being mistreated, we ought to focus on the positive aspects of it.

Arguments against legalization of Euthanasia-

The gift of human life is from God, and it is wicked and unethical to take it. The privilege of acting as God cannot be granted to humans. One's karma is the only reason they experience pain. Euthanasia diminishes the worth of human life.

It is utterly incompatible with morality, public policy, and medical ethics. Medical ethics mandate that patients should get nursing care, be healed, and not have their lives terminated. At the moment, medical research is developing quickly. So even the most fatal illnesses are now being treated. Therefore, medical professionals should encourage patients to live their terrible lives with strength—moral as well as physical strength—instead of pushing them to end their lives. The patient does not decide whether to request euthanasia on their own. Even the patient's family members play a significant part in doing it. Therefore, it is likely that the patient experiences stress and decides to end his life in this way. The pressure in these situations is, of course, not physical; rather, it is moral and psychological, and these factors end up being much more powerful. When his family makes such a choice for him, the patient begins to feel like a burden and eventually gives in.

It is thought that if euthanasia is legalized, other more vulnerable categories of people may feel pressured to choose that option for themselves. The legalization of euthanasia is opposed by organizations who advocate for disabled people on the grounds that such vulnerable populations of individuals may feel compelled to choose euthanasia because they may view themselves as a burden to society.

It has a tendency to go downhill; for instance, it might first be legalized just for those who are terminally ill, but if laws alter, it might eventually become acceptable for non-voluntary or involuntary.

Euthanasia should not be permitted if suicide is prohibited. When a person enters a depressive mood and loses all hope in life, they commit suicide. The situation when someone requests euthanasia is comparable. However, by taking good care of these patients and having hope for them, this inclination might be decreased.

As many doctors and relatives talked of the patient's painless, dignified dying, which became code for assisted murder, the patient would be unable to trust either of them.

In our culture, miracles do occur, especially when a person's life or death is at stake. Patients have been known to emerge from comas years after they fell unconscious, and we must never forget that hope is the foundation of all human existence.

Statement of Problem-

Even while pain and suffering are a normal part of life in our society, society also works to protect the sanctity of human life and the morality of the medical industry. A person's yearning for human dignity and relief from pain, according to euthanasia proponents, can make euthanasia legal in some circumstances. Artificially extending life in cases of terminally ill patients where death is inevitable may cause unnecessary misery for both the patient and his families. Many of these people have been referred to as "prisoners of technology" since they are unable to experience pleasure, sense, or understand their surroundings.

Taking into account the possibility that euthanasia could aid the patient's family by relieving their financial burden. Medical expenses are among the major stresses facing society today. It is not unusual for some families to be left in this situation after a loved one spends months in a nursing home or intensive care unit before they are finally permitted to say farewell. If legislation is put in place, don't these patients have the right to a peaceful, pain-free death? Will the patient's guardian consent to the killing of terminally ill patients if it is decided that doing so will solve the issues and have the desired effects?

Review Literature-

Euthanasia is the act of ending a person's life by injection or by ceasing extraordinary medical care in order to relieve them of unbearable pain or from a terminal sickness if they have a terminal illness or are in an incurable condition. Euthanasia is defined as the purposeful killing of a person whose life is deemed to be unworthy of living by an act or omission. It is sometimes referred to as "Mercy Killing," which is an act where a person who is suffering from a painful life and is either in an unrecoverable state or has no prospect of survival ends his life in a painless way. It is an easy, painless, and compassionate death. It entails arranging for someone's death in order to prevent or put an end to their misery or suffering, particularly if they have an incurable illness.

The House of Lords select Committee on Medical Ethics states that “a deliberate intervention under taken with the express intention of ending life to relieve

intractable suffering". Therefore, it can be said that euthanasia is the deliberate and intentional killing of a human person by a direct action, such a lethal injection, or by the failure to provide even the most basic medical treatment, or by withdrawing life support in order to release that human being from a torturous life. Basically, the goal is to hasten the death of a disabled person or patient who is terminally ill. It is used so that a patient who has been afflicted with a terminal illness or one that has rendered him incapacitated might calmly terminate his life and may also prove to be less unpleasant for him in his final days. Euthanasia's primary goal is to ensure a less painful death for a person who will in any event pass away after enduring a lot of agony. The practice of euthanasia allows a person to live and die with dignity. In the simplest terms, it refers to sending a person to a painless death when they have a terminal illness or when their physical or mental impairment has rendered their existence meaningless or hopeless.

We frequently encounter immobile, completely dependent terminally ill persons in our daily lives. Their feelings are truly harmed by it. When we consider them, we would conclude that death would be a better alternative for them than continuing to live such a difficult existence, which is painful on both a physical and psychological level. On the other hand, if we examine the Netherlands, where euthanasia is permitted, we will observe how it is misused there. Therefore, no one wants euthanasia to be authorized in India in order to follow its lead.

The end of all rights and the one fate from which none of us can escape is death, which is not a right. The right to life is the highest right we have as humans since it is unalienable and cannot be taken away by anybody, not even the individual who has it. It's comparable to the fact that we are not permitted to buy ourselves into slavery under the terms of our right to liberty. Furthermore, the phrase "die with dignity" does not apply to this right to die. Since history records several instances of people confronting degrading deaths in a dignified way, dying with dignity has to do with how one approaches death, not how one dies. Of course, the underlying issue raised by this argument is the alleged lack of dignity in making someone endure misery when they could have ended their life instead. Better pain management methods, as opposed to extinguishing the suffering, are a more moral

response to this issue. **Maruti Shripathi Dubal vs State of Maharashtra**[4] was the case that first raised the subject of whether or not Article 21 covers the freedom to die. The Bombay High Court ruled in this case that the "right to life" encompasses the "right to die," and Section 309 was overturned as a result. In this instance, the court made it very clear that the freedom to die is not against nature; it is simply abnormal and unusual. The court also discussed the many circumstances in which someone would choose to end their life. In P. Rathinam v. Union of India, the Supreme Court upheld this. The Supreme Court's five-judge bench, however, ruled in the case of Gian Kaur v. State of Punjab that the "right to life" protected by Article 21 of the Constitution did not include the "right to die." In this instance, the court said unequivocally that Article 21 can never encompass the right to death and solely guarantees the rights to life and personal liberty. Euthanasia is not legal in India, like it is in practically every other nation. There is no distinction between active and passive euthanasia in India, and there is no euthanasia-specific penal law that has yet to be inserted into the I.P.C. Section 306 of the IPC makes it illegal to aid or abet someone who is committing suicide. In **Naresh Marotrao Sakhre v. Union of India and others**[5], Justice Lodha made the distinction between euthanasia and suicide, noting that, "suicide by its nature is an act of self-killing or self-destruction, an act of terminating one's own act and without the aid or assistance of any other human agency. Euthanasia or Mercy killing on the other hand means implies the intervention of other human agency to end the life. Mercy killing is thus not suicide and the provision of section 309 does not cover an attempt at mercy killing. The two concepts are both factually and legally distinct. Euthanasia or Mercy killing is nothing best homicide whatever the circumstances in which it is affected."

If a doctor kills a patient with the intent to do so, he or she may be charged under section 300 of the I.P.C., clause (1), but if the patient gave their valid consent, exception 5 of section 300 applies, and the act is viewed as culpable homicide not amounting to murder under part I of section 304. As there is a purpose to cause a patient's death for his benefit, non-voluntary and involuntary euthanasia may fall under sections 88 and 92 of the IPC. Additionally, additional family members who are aware of such an intention on the part of the patient or the doctor may be held

[4] CriLJ 549 AIR 1987
[5] 1995 CriLJ 96

accountable under section 202 of the IPC. In M. S. Dabal v. state of Maharashtra, the Supreme Court described the status of Indian law on euthanasia as follows: “Mercy killing is nothing but homicide, whatever the circumstances in which it is affected. Unless it is specifically accepted it cannot be offences. Indian Penal Code further punishes not only abetment of homicide, but also abetment of suicide”.

The case of Aruna Shanbaug has established standards for the practice of passive euthanasia in India for the first time. The idea was rarely raised as a worry before today. The ruling in the relevant case has broadened the application of Article 21 of the Constitution by opening up new possibilities for the right to a dignified death. The High Court has given precise instructions about passive euthanasia in the matter at hand. These regulations outline the proper steps to take when removing any artificial life support or medical care from a patient who could otherwise die. Passive euthanasia is now permitted in India with certain restrictions that the High Court will establish.

In the 2018 case of **Common Cause v. Union of India**[6], the Supreme Court held that in addition to the right to life, Article 21 of the Constitution also includes the right to a dignified death. This is important to keep in mind when evaluating the legality of passive euthanasia. Therefore, it is crucial to turn off the life support for terminally sick patients who have been in a coma for a very long time so they can pass away in peace. In the given case, the concept of "living will" was also offered. The idea of a "living will" is a document that makes it easier to obtain a patient's consent ahead of time in the event that, in the future, the patient becomes seriously ill, paralyzed, or the victim of a situation or medical condition that renders him incapable of giving consent or making any decisions. Consequently, the paper functions as the patient's living will or living consent.

Aim and Objects-

- To evaluate the worth of individuals life
- To study meaning and concept of dignified death
- To research whether euthanasia can be solution for those who have terminal illness

[6] (2018) 5 SCC 1

- To study India's legal stand on the subject of euthanasia
- To study the role of Law Commission of India in this regard and recommendations of the Supreme Court and the Law Commission of India.
- To determine whether euthanasia be permitted and legalized for patients who are suffering from terminal illness
- To ascertain whether euthanasia in India requires a legal framework

Research Hypothesis-

1. Every person has a right to have a quality life and has right to end such life i.e. Right to die with dignity
2. A severely sick or terminally ill person should have the right to choose death where end result is ultimately death
3. India has legalized passive euthanasia but there are many ethical and legal challenges

Research Methodology-

The researcher has adopted doctrinal research methodology for the present research. In doctrinal research methodology secondary sources are used to collect data and information such as data from government and semi government publications, books and journals, commentaries research articles, the internet, newspapers etc.

Scope of the research-

There are advantages and disadvantages to euthanasia. It is discussed across the nation. The subject calls for in-depth knowledge and a diligent approach. Sadly, it is minimal on a national level, therefore the scope of the research issue is restricted to the Indian context.

The research extends to-

- Provisions of the Constitution of India
- Provisions of the Indian Penal Code

- Legal perspective on euthanasia at international level

Chapters-

The proposed research work is divided into following tentative chapter scheme

Chapter-1

Introduction

Chapter-2

Historical background and Meaning

Chapter-3

Right to Life and Right to Die with dignity

Chapter-4

Legalization of euthanasia at international level

Chapter-5

Legislation and constitutional provision on euthanasia in India

Chapter-6

Role of judiciary

Chapter-7

Conclusion and suggestions

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